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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Domestic Partnership of RONNIE A.
TODT and MARK GERARD MALSON.

RONNIE A. TODT,

Appellant,

v.

MARK GERARD MALSON,

Respondent.

E044872

(Super.Ct.No. IND089875)

OPINION

APPEAL from the Superior Court of Riverside County. J. Michael McCoy,
Judge. Affirmed.

Best, Best & Krieger, Kira L. Klatchko and Douglas S. Phillips for Appellant.

Law Offices of Michael Leight, Michael Leight and Michelle Leight for
Respondent.

1. Introduction¹

Ronnie A. Todt appeals from a judgment of nullity concerning the existence of a domestic partnership (§ 297 et seq.) between Todt and Mark Gerard Malson. Our review confirms the record contains substantial evidence to support the trial court's findings in its statement of decision that Todt and Malson were not living together when they executed a declaration of domestic partnership in September 2003 or when the declaration was filed with the Secretary of State in February 2004. Furthermore, at the time they executed the declaration, Malson was party to another domestic partnership. We affirm the judgment of nullity.

2. Factual and Procedural Background

a. The Petitions for Dissolution

In August 2006, both men filed petitions which were later consolidated. Todt filed a petition for dissolution of domestic partnership (§ 299, subd. (d)) in which he alleged the partnership was registered with the Secretary of State in February 2004 and separation occurred on July 20, 2006. Todt asserted that he and Malson lived together between February 2004 and July 2006 while Malson supported Todt as a student. Malson held title to 53845 Avenida Vallejo in La Quinta in his name and both men owned 52860 Avenida Villa in La Quinta. Todt asked for a declaration of separate and community assets, including real property, vehicles, and personal property, and he requested a support order based on guidelines. Malson's petition was for dissolution or

¹ All statutory references are to the Family Code unless stated otherwise.

nullity of the partnership. It alleged the date of registration was February 18, 2004, and the date of separation was to be proved at trial. Malson opposed the support order, asserting that, although he had signed the declaration of domestic partnership in September 2003, he was not living with Todt at the time. Furthermore, he had withdrawn his consent to the partnership before February 2004 when Todt filed the declaration without his knowledge. Malson also claimed to be the sole owner of the Avenida Vallejo property. Malson contended Todt was able to resume working as a waiter to support himself.

The subject declaration was signed by both men and notarized in San Diego on September 22, 2003. It listed “353 Escuela #222” in Palm Springs as their common residence address. It was filed with the Secretary of State on February 18, 2004. The Secretary of State generated a certificate of registered domestic partnership dated February 18, 2004. Malson burned the original certificate in May or June 2006.

b. The Contested Hearing

During the hearings conducted in 2007, the trial court allocated to Todt the initial burden of establishing the validity of the domestic partnership.

Todt testified he was living on Herman Avenue in San Diego in July 2003 when Malson invited him to move to Palm Springs and live with him at 353 Via Escuela, Apartment 222. On July 29, 2003, Todt put his furniture in storage in San Diego. The men lived on Via Escuela until April 2004 when they moved to the Avenida Vallejo property and Todt retrieved his stored furniture.

Todt claimed the men were living on Via Escuela when they executed the declaration. It was signed in Hillcrest in San Diego because they were celebrating Malson buying diamonds for Todt. According to Todt, the declaration was filed with the state by Malson after Valentine's Day weekend in 2004. The two men lived together at the Vallejo residence from April 2004 until August 2006.

Todt claimed that, during their relationship, Malson paid all their living expenses. He also paid for Todt's educational expenses. They purchased three cars—a Saab, a Mercedes, and a Ford truck—and two houses, the Avenida Villa and Avenida Vallejo properties. Both of them held title to the Villa house. Only Malson was on the title to the Vallejo house, their residence. In September 2003, both men were listed as named insureds on an automobile insurance policy for Todt's Saab. They were jointly listed on other insurance policies.

On January 9, 2004, Todt wrote an angry letter to "Mr. Malson," which read in part: "This will be my last letter to you. I would like 2 things sent to me at my home. . . . One is the spare key to the Saab. . . . I will change the insurance on Monday. . . . I dropped off the only things you have left at my house that were yours, your picture and your car keys. . . . Thank you for my marriage and divorce." The letterhead's address is Herman Avenue in San Diego. Todt claimed he was not certain about the date but he was not living on Herman Avenue when he wrote the letter. His reference to "my home," however, did mean Herman Avenue.

Another letter, dated February 13, 2004, was sent from “The Malson/Todt Family” to the Secretary of State. The letterhead lists Ron A. Todt and Mark G. Malson at Herman Avenue in San Diego. The letter states:

“Please make the necessary corrections to our address because we have sold the home at 353 Escuela #222 Palm Springs, Ca. 92262. Our new address is 3322 Herman Ave San Diego, Ca. 92104. Please send confirmation and any other paper work to our new address. We have been asked to show documentation of our domestic partnership and are not sure exactly what the insurance company needs so we can both have our medical coverage.”

In his deposition, Todt had admitted writing the letter of February 13, 2004. In court, he disclaimed responsibility for it and admitted most of it was not true. He was very evasive about how long he lived at Herman Avenue and paid rent. The address on his driver’s license was Herman Avenue.

Todt recalled that, on February 18, 2005, he and Malson celebrated the one-year anniversary of the date they filed their domestic partnership.

In October or November 2006, after the men had filed their petitions for dissolution, Todt learned that Malson had previously filed another declaration of domestic partnership with John Feit on November 2, 2001. Malson had filed a notice of termination of that partnership on October 6, 2003.

Victoria Doyle, a friend of Todt’s, testified that she met the men in February or March 2006. Todt introduced Malson to her as his husband. She advised them about a real estate purchase. They represented themselves to her as being registered domestic

partners. On cross-examination, Doyle acknowledged possibly telling Malson she was a witch who would place a spell on him. Doyle had supplied drugs for stress relief to Todt in April or May 2006. She claimed Malson acted inappropriately sexual toward her in May 2006.

Malson testified that he met Todt in July 2003. Todt did not live with him in Palm Springs. Malson purchased the Vallejo property as sole owner in April 2004. Todt lived there for a couple of months after June 2004. Malson did not pay Todt's college tuition.

Malson had previously registered as a domestic partner with John Feit. Although he signed a notice of termination of that partnership that was filed on October 6, 2003, he did not intend to terminate the partnership with Feit when he signed the notice. He executed the partnership declaration with Todt because Todt was extremely ill and Malson was trying to facilitate health insurance for him. But they were not living together in Palm Springs on September 22, 2003.

Malson did not file the declaration with the state. Malson found out in 2006 that Todt had done so without his consent. After showing Malson the certificate of partnership, Todt had framed it and displayed it at the Vallejo residence for some period of time. Malson also did not see the letter to the Secretary of State dated February 13, 2004, or the response to that letter, until Todt began dissolution proceedings in August 2006. Malson never lived at Herman Avenue.

Malson admitted Todt was listed as a coinsured on his health care policy. Todt was named as Malson's life insurance beneficiary. They were also co-owners of vehicles with joint liability insurance. They shared title on the Villa real property. Malson

acknowledged writing a love letter to Todt regarding their anniversary and dated February 18, 2005.

Malson denied receiving real estate advice from Doyle. She did leave him a voice message in which she described him as being cursed by “a green-eyed witch.”

Moureen Holcomb testified she was Malson’s friend and neighbor beginning in March 2003 when he lived at the Via Escuela apartment. She observed Todt visiting Malson but did not know if he was living there. Virginia Fowler, another neighbor, met Malson in May 2003 and socialized with him frequently. She also did not know if Todt was living with Malson on Via Escuela. Todt claimed Fowler gave the men a housewarming gift when they moved to the Vallejo property.

c. Statement of Decision and Judgment

The trial court found no valid registered domestic partnership existed between the parties because they did not live together when it was executed and because Malson was part of a previously registered partnership. The court also expressly stated it did not believe Todt’s evidence. The court entered a judgment of nullity.

3. Discussion

We review for substantial evidence a judgment of nullity regarding the validity of a marriage or a domestic partnership. (§§ 297.5 and 299, subd. (d); *In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 756, citing *In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 155; *In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 49-50.)

For a detailed recitation and application of the Domestic Partner Act (§ 297 et seq.), we refer the parties to *In re Domestic Partnership of Ellis and Arriaga* (2008) 162

Cal.App.4th 1000, 1003 and 1006-1012 and to *In re Marriage Cases* (2008) 43 Cal.4th 757, 779, footnote 2, 801-808, 830-831. We also note that the present case involves the pre-2005 version of the Act because Todt and Malson signed a declaration in 2003 that was filed in 2004. The statutory requirements for termination, however, are those effective as of January 1, 2005. (§ 299.3, subd. (a).)

Under former and present section 297, the requirements for establishing a domestic partnership include that the parties have a common residence, share basic living expenses, and not belong to another domestic partnership. In the present case, substantial evidence supported the trial court's determination regarding the first and third requirements.

Although Todt claimed he and Malson had lived together, Todt also wrote the letter in January 2004 indicating their relationship had ended and he was living on Herman Avenue in San Diego. In February 2004, Todt represented to the Secretary of State that both men were living on Herman Avenue. Malson denied living together except for two months in June and July 2004. Malson testified, and the evidence supported his testimony, that he was also a member of another domestic partnership with Feit when he executed the declaration with Todt in September 2003. Later occurrences could not cure the initial invalidity of the Todt-Malson partnership: "Subsequent events are not germane to whether there was a proper effort to create a valid marriage, although later conduct can shed light on whether the person had reason to believe he or she was married. [Citation.]" (*Estate of DePasse* (2002) 97 Cal.App.4th 92, 108.) By statute, the termination of the Malson-Feit partnership could not have been effective until October 6,

2003, when it was received by the Secretary of State. (Former § 299, subd. b.)

Therefore, the trial court correctly determined the Todt-Malson domestic partnership declaration was invalid when it was executed in September 2003 and filed in February 2004.

We reject Todt's assertion that it was Malson's initial burden to demonstrate their domestic partnership was invalid rather than Todt's burden to show it was valid. The law made it incumbent upon Todt to plead and prove a valid domestic partnership or Todt's good-faith belief in its existence. (*In re Domestic Partnership of Ellis & Arriaga, supra*, 162 Cal.App.4th at p. 1012.) This he failed to do. Furthermore, even if we credit Todt's initial showing, Malson's opposing evidence constituted substantial evidence supporting the trial court's rulings and statement of decision.

We decline to consider the issues of fraud or estoppel because the trial court properly decided the case based on the evidence that Malson and Todt were not living together and Malson was part of another domestic partnership when the declaration was executed. Notwithstanding the foregoing, Malson explained quite credibly that the reason he signed the declaration was to accommodate Todt's effort to obtain health insurance under Malson's policy. Based on that evidence, it is a reasonable inference that Todt understood why Malson signed the declaration and Todt knew there was not a valid domestic partnership between them.

Finally, even if Todt had raised the issue below, we are not persuaded the trial court should have engaged in a "putative domestic partnership" analysis regarding whether Todt had a reasonable and objective good-faith belief in the validity of the Todt-

Malson domestic partnership. (§ 2251; *In re Marriage of Ramirez, supra*, 165 Cal.App.4th at p. 756, citing *Estate of DePasse, supra*, 97 Cal.App.3d at pp. 107-108; *In re Marriage of Buckley* (1982) 133 Cal.App.3d 927, 934.)

We recognize that two appellate courts differ on this issue. (*Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1174; *In re Domestic Partnership of Ellis & Arriaga, supra*, 162 Cal.App.4th at p. 1010.) But we conclude the issue of putative domestic partnership is not relevant or applicable here. To paraphrase *Estate of DePasse, supra*, 97 Cal.App.4th at pp. 107-108: “[A] subjective good faith belief in a valid [domestic partnership] by itself, even when held by a credible and sympathetic party, is not sufficient. [Citation.] A determination of good faith is tested by an objective standard. [Citation.] Therefore, a proper assertion of putative [partnership] status must rest on facts that would cause a reasonable person to harbor a good faith belief in the existence of a lawful California [domestic partnership].” In order for Todt to have possessed a reasonable and good-faith belief in the validity of the domestic partnership, the court necessarily had to make a threshold finding that the two men lived together—a fact the court expressly did not believe. Therefore, Todt cannot show he suffered any prejudice in this respect.

4. Disposition

We affirm the judgment of nullity. Malson, as the prevailing party, shall recover his costs on appeal.

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s/Gaut
J.

We concur:

s/Ramirez
P. J.

s/McKinster
J.